IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12761 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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REVABEN W/O BABUSING GULABSINGKAHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12761 of 2000

MR HR PRAJAPATI for Petitioner No. 1

MR HL JANI ASST GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/07/2001

ORAL JUDGEMENT

#. Heard Mr.H.R. Prajapati, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP for the respondents. In the present

petition, the petitioner has challenged the order of detention dated 30th November, 2000 under Article 226 of the Constitution of India. The order of detention has been passed by the Police Commissioner, Surat City under Section 3[1] of the PASA Act. The ground of the detention has been communicated to the present petitioner by the detaining authority under Section 9[1] of the PASA Act. The present petitioner has been detained at Baroda Central Jail as Class - II detenu. According to the grounds of detention as per Annexure-1, two offences have been registered against the present petitioner. The date of offence registered against the present petitioner is dated 10th July, 2000 and 13th October, 2000 under the provisions of Bombay Prohibition Act and the petitioner has been considered as bootlegger under Section 2[b] of the PASA Act. The statement of the secret witnesses have been recorded by the concerned police inspector on 18th November, 2000 and 19th November, 2000 and the detaining authority has verified the said statements on 29th November, 2000. It is necessary to note that the first statement dated 18th November, 2000 has been verified by the Police Commissioner, Surat city on 29th November, 2000 and second statement at page 48 dated 19th November, 2000 which has been recorded by the police inspector, DCB Surat which has not been verified by the detaining authority on 29th November, 2000 but this statement has been verified by the same police inspector who has recorded on 19th November, 2000. Therefore, out of two statements, one statement has been verified by the detaining authority of secret witness and one statement was not verified by the detaining authority. The respondent State Government has filed reply but no reply has been filed by the detaining authority.

#. Learned advocate Mr.H.R.Prajapati has raised two contentions challenging the detention order and according to him, two contentions are enough to vitiate the order of detention. The first contention is that the detaining authority has not verified two statements recorded by the concerned police inspector and therefore subjective satisfaction of the detaining authority has not been established from the record. Genuineness of such statement of secret witnesses has not been verified by the detaining authority in respect of the second statement of secret witness and therefore, it amounts to non application of mind and order of detention is required to be set aside. The second contention which has been raised by the learned advocate Mr.H.R.Prajapati is that first statement which has been verified by the detaining authority on 29th November, 2000 and on next date i.e. on 30th November, 2000, the order of detention

has been passed in a mechanical manner without application of mind and therefore he has relied upon decision of this Court reported in 2000 [3] GLR 2696.

#. Learned AGP Mr.H.L.Jani, appearing on behalf of the respondent - State has submitted that the State Government has filed reply but the detaining authority has not filed any reply. However, learned AGP Mr.Jani has fairly admitted one fact that the second statement of the secret witness at page 49 and 50 has been shown to the learned AGP Mr.Jani and he fairly admitted that second statement of the secret witnesses has not been verified by the detaining authority,but on the contrary the said statement of the secret witness has been verified by the police inspector and therefore subjective satisfaction of the detaining authority is not established and the privilege under Section 9[2] of the PASA Act is not established and genuineness of the statement has not been verified by the detained authority. This aspect has remained uncontroverted and not disputed before this Court by the learned AGP Mr.H.L.Jani. However, learned advocate has submitted that looking to the facts on record and material which are on record, the order of detention has been rightly passed by the detaining authority. He submitted that there were compelling circumstances to pass the detention order, otherwise, activities of the petitioner will adversely affect the public order. Therefore, according to the submission of the learned AGP, the order of detention is legal and valid which does not require any interference of this Court.

#. I have considered the submission of both learned advocate. However, one fact remains undisputed before this Court that second statement of the secret witness at page 49 and 50 has not been verified by the detaining authority and therefore, genuineness of the statement made by the secret witness which has not been verified by the detaining authority then subjective satisfaction of the detaining authority while claiming the privilege under Section 9[2] of the PASA Act and subjective satisfaction while passing the detention order is not established from the record. The second contention that the date of verification of the statement of the secret witness dated 29th November, 2000, on next date, the order of detention has been passed in a mechanical manner and without application of mind. The view taken by this Court in a decision reported in 2000 [3] GLR 2696, relevant observations are as under :-

"After referring to Kalidas C. Kahar V. State

of Gujarat, 1993 (2) GLR 1659 the Court observed :

> The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August, 1999, 21st August, 1999 and 25th August, 1999 with regard to the incidents dated 10th July, 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have made on 27th August, 1999 and it is clear from the record that it was on 29th August, 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August, 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August, 1999 the detention order has been passed. [para 9]

> The manner in which the verification has been recorded of the statements made by these three witnesseth for the purpose of Section 9(2) shows that the same has been done only as an empty formality inasmuch as the same witnesses had been called before the statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesseth so as to express the fear and to invoke the privilege under Section 9(2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division bench that it is a case of wrong exercise of power under Section 9(2) and it is established that in such cases, the wrong exercise of power under Section 9(2) adversely affects the detenu's right of making an effective representation guaranteed under Article 22[5] of the Constitution of India. [para 9].

> Once the materials are placed before the

> detaining authority with the proposal by the sponsoring authority, it must have reasonable sufficient time for the purpose of verification of the fats and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege under Section 9(2) of the Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the present case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30th August, 1999, i.e. on the next day to the date on which the materials were considered by the detaining authority. [para 9]

#. In light of the observations made this Court and considering the contention raised by the present petitioner in ground-H on page-6 of the petition so looking to the undisputed fact which are on record that the statement of the second secret witness was not verified by the detaining authority, according to my opinion, order of detention is required to be set aside.

#. In the result, present petition is allowed. The order of detention dated 30th November, 2000 passed by the Police Commissioner of Surat City is hereby quashed and set aside. The present petitioner - detenu - REVABEN W/O BABUSING GULABSINGKAHAR who has been detained in Central Jail Baroda is ordered to be released immediately if she is not required in any other case. Rule is made absolute with no order as to costs.

In view of the order passed in the main petition, the present Civil Application No.11760 /2000 is disposed of accordingly.

Date : 3-7-2001 [H.K.Rathod, J.]

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